

Message Text

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ORIGIN L-02

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DRAFTED BY L/M:CLBLAKESLEY:AD

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S/NM - N. WARNER

ARA/CAR - G. HIGH

DESIRED DISTRIBUTION

JUSTICE - M. STEIN; J. STRICKLER

----- 003199

P 272229Z DEC 74

FM SECSTATE WASHDC

TO AMEMBASSY PARIS PRIORITY

AMCONSUL MARTINIQUE

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E.O. 11652: N/A

TAGS: CPRS, PFOR, SNAR, FR, MB

SUBJECT: EXTRADITION -- BETTANCOURT ET AL

REF: PARIS 30981

1. DEPARTMENT APOLOGIZES FOR CONFUSION CAUSED BY USE OF PHRASE "PERFECT PROVISIONAL ARREST FOR EXTRADITION" IN A-9153. THIS PHRASE IS TERM OF ART MEANING TO TOLL THE TIME LIMITATION UNDER THE TREATY. TO TOLL THE TIME LIMIT, OF COURSE, MEANS THAT THE TIME LIMITATION IS NO LONGER PERTINENT. A PROVISIONAL ARREST PURSUANT TO TREATY IS PERFECTED WHEN THE DOCUMENTATION TO USED FOR THE EXTRADITION HEARING ARE PROVIDED TO MFA. -

2. HERE FOLLOWS A DESCRIPTION OF PROCEDURE FOR EXTRADITION OF FUGITIVE FROM ABROAD. WHEN FUGITIVE IS FOUND IN FOREIGN
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COUNTRY AND IS CONSIDERED LIKELY TO FLEE, THE DEPARTMENT OF

JUSTICE REQUESTS THE DEPARTMENT OF STATE TO REQUEST HIS PROVISIONAL ARREST PURSUANT TO EXTRADITION TREATY. JUSTICE PROVIDES DEPARTMENT WITH THE INFO IT HAS ON THE FUGITIVE AND ON THE CRIME HE HAS ALLEGEDLY COMMITTED. THIS INFO IS TRANSMITTED BY CABLE TO THE EMBASSY AND THE EMBASSY PROVIDES IT TO THE APPROPRIATE GOVERNMENTAL AUTHORITIES BY NOTE REQUESTING PROVISIONAL ARREST PURSUANT TO EXTRADITION TREATY. U.S.-

FRENCH TREATY CALLS FOR INFO TO BE PRESENTED TO MFA, OR IN CASE OF EMERGENCY TO LOCAL MAGISTRATE -- SEE ARTICLE IV. NO DOCUMENTATION IS REQUIRED FOR PROVISIONAL ARREST TO BE REQUESTED OR EXECUTED. THE TREATY STATES THAT THE TELEGRAPHED EXISTENCE OF WARRANT OF ARREST IS SUFFICIENT FOR ARREST TO BE MADE. USUALLY, HOWEVER, EXISTENCE OF THE WARRANT, DESCRIPTION OF INDIVIDUAL SOUGHT (NAMES, DPOB, PHYSICAL DESCRIPTION), DESCRIPTION OF CRIME(S) ALLEGEDLY COMMITTED, INCLUDING AS MUCH BACKGROUND AS POSSIBLE, AND THE LIKELIHOOD OF THE FUGITIVE'S FLIGHT IS ALL CABLED TO EMBASSY AND TRANSMITTED TO APPROPRIATE OFFICIALS BY NOTE. THIS IS TO SATISFY AUTHORITIES THAT ARREST IS PROPER AND NECESSARY AND THAT THE RIGHT PERSON IS BEING ARRESTED. THE POINT IS THAT THE PROVISIONAL ARREST IS MADE WITHOUT THE SUBMITTAL OF ANY DOCUMENTATION. HENCE THE NEED TO PERFECT THE ARREST BY DOCUMENTATION BEFORE THE 40 DAYS HAVE EXPIRED.

3. THE NOTE REQUESTING PROVISIONAL ARREST IS REALLY THE FIRST FORMAL REQUEST FOR EXTRADITION OF THE FUGITIVE. THE REASON FOR THE NOTE IS TO HAVE THE PERSON ARRESTED PURSUANT TO THE EXTRADITION TREATY. THUS, HE IS ARRESTED TO BE PRESENT AT A HEARING FOR HIS EXTRADITION. THE 40 DAY TIME LIMIT IN THE TREATY IS TO ASSURE THE GOVERNMENTS THAT A PERSON WILL NOT LANGUISH IN JAIL FOR ANY TIME LONGER THAT WHAT IT SHOULD TAKE TO PRESENT THE DOCUMENTATION FOR THE HEARING. HENCE, THE PROVISIONAL ARREST IS PERFECTED WHEN THE DOCUMENTATION FOR THE HEARING IS PRESENTED.

4. THE U.S.-FRENCH EXTRADITION TREATY CALLS FOR A DULY AUTHENTICATED COPY OF THE WARRANT AND DEPOSITIONS OR OTHER EVIDENCE UPON WHICH THE WARRANT WAS ISSUED (SEE ARTICLE III). LIMITED OFFICIAL USE

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AS THE ARREST HAS BEEN MADE PURSUANT TO THE EXTRADITION TREATY, THE ONLY THING LEFT FOR THE DOCUMENTS TO DO IS TO TOLL THE TIME LIMIT AND TO BE USED AS EVIDENCE OF EXTRADITABILITY. AGAIN, ONCE THE ARREST IS MADE PURSUANT TO THE TREATY, IT IS GOOD UNTIL THE 40 DAYS EXPIRE WITHOUT DELIVERY OF DOCUMENTS. ONCE THE DOCUMENTS ARE DELIVERED, THE ARREST IS PERFECTED AND THE TIME LIMITATION NO LONGER APPLIES.

5. THE GOVERNMENTAL AUTHORITIES MAY WISH TO RECEIVE MORE EVIDENCE TO SHORE UP THEIR CASE FOR EXTRADITION, OR TO CORRECT MISTAKES, BUT THESE ADDITIONAL SUPPLEMENTARY DOCUMENTS DON'T HAVE ANY EFFECT ON THE TIME LIMITATION, AS THE TIME LIMITATION HAS ALREADY BEEN TOLLED. THE INDICTMENT TO BE RETURNED BY NEW YORK AUTHORITIES WILL SUPPLANT THE CRIMINAL COMPLAINT AS THE BASIS FOR THE EXTRADITION, BUT UNTIL THAT INDICTMENT HAS BEEN PROVIDED TO THE AUTHORITIES,

THE CRIMINAL COMPLAINT BY THE DEA AGENT CERTAINLY SUFFICES. STATE A09153 ENCLOSED THIS CRIMINAL COMPLAINT AS WELL AS WARRANT FOR ARREST AND AFFIDAVIT EVIDENCE. THIS DOCUMENTATION, WHILE HURRIEDLY PREPARED, BECAUSE OF THE MISINTERPRETATION OF THE TIME LIMITATION, IS CERTAINLY SUFFICIENT TO TOLL THE TIME LIMITATION AND TO PRESENT AS EVIDENCE OF FUGITIVES' EXTRADITABILITY. THE FACT THAT ADDITIONAL EVIDENCE WAS FORTHCOMING WAS EXPLAINED SO THAT IF THE PROCUREUR OR OTHER GOF OFFICIALS BECAME WORRIED OR WANTED ADDITIONAL MATERIAL, IT COULD BE EXPLAINED THAT IT WAS FORTHCOMING.

6. DOCUMENTS SENT UNDER A-9153 WERE INTENDED TO PERFECT THE PROVISIONAL ARREST AND TO BE USED IN EXTRADITION HEARING. EMBASSY REQUESTED TO IMMEDIATELY ADVISE MFA OF THIS, PRESENT DOCUMENTS IN APPROPRIATE MANNER AND REQUEST THAT THEY BE FORWARDED TO MARTINIQUE ASAP. ALL ADDITIONAL EVIDENCE WILL BE SUPPLEMENTAL TO THAT ALREADY PROVIDED. IT WILL BE AUTHENTICATED AND TRANSLATED PROPERLY. IT SHOULD NOT BE AFFECTED BY THE TIME LIMITATION. BROWN

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